

Appendix 8: Legal Issues

The Blue Ribbon Commission on Health Care Reform notes that a number of legal issues are raised by the five proposals that were submitted for economic modeling. Lewin expressly stated that it did not take into consideration potential issues of legality.

An in-depth legal analysis of such a myriad of issues was not possible, given the time constraints under which the Commission crafted its report, and the likelihood of disparate legal opinions among attorneys. As such, we chose not to secure legal advice, but rather to note that such legal issues must be considered, particularly with regard to the limitations and restrictions imposed by existing federal statutes, such as ERISA, HIPAA, and EMTALA.

In addition, there are specific legal issues that should be addressed in considering the actual recommendations of the Commission. By way of example only, we note the following legal issues that should be evaluated:

1. What religious exemptions, if any, must be provided if an individual health insurance mandate were adopted in Colorado?
2. What exemptions, if any, must be provided to Southern Ute and Ute Mountain Ute tribal members if an individual health insurance mandate were adopted in Colorado? Are there similar considerations that apply to members of other tribes, living in Colorado, that ought to be taken into account in an individual mandate environment?
3. What restrictions, if any, does the Americans with Disabilities Act, or other applicable law, apply to proposed changes to the rating system and re-structuring of Cover Colorado, in order to provide persons with chronic conditions access to the same product at the same cost as the general population in an individual-mandate, guarantee-issue market?
4. May Colorado require employers to establish premium only Section 125 plans under ERISA?
5. What HIPAA considerations, if any, are involved in establishing a Connector?
6. What legal issues are raised by combining Medicaid and CHP+ family and children's programs? As examples:
 - a. What EPSDT issues must the State take into account?
 - b. What legal issues are raised, if any, in combining a managed care and a fee for service delivery system?
 - c. What waiting period, if any, may be imposed in a combined program and for Medicaid expansion populations?
 - d. What due process is required in a combined program?